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Dearborn from the hundred years of accumulated errors which had their origin in the misstatements of a disgruntled subordinate officer, and the romantic imagination of a writer whose relationship to some of the participants rendered her narrative as valueless in the matter of verity as it is charming in literary value.

The curious fortunes which have attended many manuscripts of historic value worthily include the Fort Dearborn manuscripts within their range. As Mr. Quaife narrates the story, one of the most important of them, a document of several hundred pages, disappeared, apparently for all time, from the home of the Heald family a half-century ago. Another, Lieutenant Helm's massacre narrative, after being lost to sight for three-quarters of a century, was discovered a few years since in the Detroit Public Library. A third, the fatal order of Hull to Captain Heald for the evacuation of the fort, long supposed to have been destroyed, has been for over forty years, unknown to historical workers, a part of the Draper Collection, now the property of the Wisconsin State Historical Society. Still other documents gathered with loving care within the walls of the local historical society by citizens of Chicago, by reason of this fact were doomed to perish in one or other of the fires which have twice consumed the society's archives. Such was the fate of the papers of Lieutenant Swearingen, destroyed in the great fire of 1871, a few years after he had presented them to the society. Such was the fate, also, of John Kinzie's account-books with their unique picture of early Chicago in the years from 1804 to 1824.

Fortunately in both these instances a remnant of the original has been preserved to us through the very fact of its retention in private hands. Swearingen retained part of his private papers, and some of these, including the original journal of the march of the troops from Detroit to Chicago in 1803 to establish the first Fort Dearborn, are still in the possession of his descendants. Of Kinzie's account-books a transcript of the names together with some additional data is all that remains. Its preservation is due to the fortunate circumstance that ten years before the Chicago fire the list was copied for the use of an historical worker, who carried it with him when he left Chicago to enter the Union army. More than forty years later, on the occasion of the centennial of the founding of Fort Dearborn, the original books having been destroyed, it was returned to the historical society.

*National Supremacy: Treaty Power vs. State Power.* By EDWARD S. CORWIN, of the Department of History and Politics, Princeton University. (New York: Henry Holt and Company. 1913. Pp. viii, 321.)

THIS can hardly be deemed an historical work. The first office of the historian is to make a candid examination of his material for the purpose of ascertaining what is its true content and meaning. Professor Corwin has examined his material with considerable care, but always for

the purpose of ascertaining and setting forth what of it supports a particular theory which he had previously adopted. To the rest he gives but slight attention.

His main proposition is that the treaty-making power of the United States is not restricted by the police power of the states.

The police power of a state is but another name for its governmental power over its citizens. Professor Corwin's thesis therefore is, stated in simpler form, that the treaty-making power of the United States is not restricted by any rights belonging to the states.

For this proposition he finds little authority in judicial decision, and what he does find he sedulously endeavors to explain away. The precedents to be found in our diplomatic history, particularly the Webster-Ashburton treaty as to our northeastern boundary, giving Massachusetts and Maine a pecuniary *solatium*, on account of their assent (see p. 133), also are in the main against him.

What he has got on his side, and leans on pretty heavily, is the marked trend, during the last half-century, towards national supremacy, in the practical ordering of American life. In judging of the real force and nature of this trend, he seems to take the general view urged by Professor W. W. Willoughby, in his *Principles of Constitutional Law*, that the United States constitute a federal state of which they are the sole sovereign, and as such have vested certain governmental powers in the several states, acting within their territorial limits as agents of the central authority. This Germanized conception of the relation between the United States (not the people of the United States) and the states severally permeates Professor Corwin's book from cover to cover. Accepting it as correct, he has no difficulty in declaring the treaty-making power of the United States to extend to every subject on which the states may legislate. The Supreme Court of the United States has not only thus far made no affirmation of this character, but has repeatedly stated that there were limits which could not be transgressed without invading powers reserved to the states or to the people. These utterances Professor Corwin dismisses as *obiter dicta*, and destitute of any logical basis (see p. 190). Nor is any greater merit assigned to the many discussions of our highest court, not given *obiter*, in which the sovereignty of the states is declared, as in *McCulloch v. Maryland*, where Marshall says that Maryland could not interfere with the United States Bank, because "in America the powers of sovereignty are divided between the government of the Union and those of the States. They are each sovereign with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other."

In criticizing an observation of Senator Root, that the treaty-making power of the United States might be of broader scope than their legislative power, because the states cannot make treaties, Professor Corwin remarks (p. 226), "there are no reserved powers of the States against any power of the United States". This would seem an unthinkable proposition, in view of our constitutional guaranties, even if the states

were not sovereign, unless he means, "There are no reserved powers of the States against any power of the United States exercised pursuant to the grant."

A treaty allowing Great Britain to nominate the governor of New York, in order the better to promote peace along the Canadian border, would be the exercise by the United States of a power granted—that of making treaties—but an exercise not warranted by the nature of the grant, and therefore inefficacious because in contravention of New York's right to a free election of her own officers.

Professor Corwin gives a carefully phrased description of the character of law, which seems hardly to comport with his main position. "These", he says, "are the three dimensions of the law: Logic, which keeps it as self-consistent as may be and therefore prevents the intrusion of whim; precedent, which again rules out the arbitrary and keeps the law calculable; and expediency, which keeps it adaptable, without sacrifice of majesty or dignity" (p. 20). Self-consistency in practice, adherence to precedent, and the expediency of avoiding any sacrifice of dignity to the states, seem logically to tend towards the doctrines of Marshall and Story and Webster and Field.

The author is no friend to putting the constitutional guaranties forward to prevent legislation sought to secure the public interest. Our reliance on them, he says (p. 307), has made us the most litigious people on earth, and only too often substituted in our legislative chambers for the question "Is it good?" the question "Is it constitutional?" Arguments like these will not weigh heavily with most intelligent Americans. The federal government could not have been instituted, nor maintained, except by reason of a general belief that the states have rights, and do not hold them by sufferance, even against the treaty power. "Such", to quote the author's words (p. 248), "is the marvelous cat-like suppleness and longevity of the State-rights dialectic. Thrown out of the window, it still manages to land on its feet; and it has survived many times nine deaths."

The proof-reader allowed some errors to escape his eye, as where, on page 119, a claim under the police power is referred to as one that "could save a State in defeating the reasonable expectations of a franchise from constitutional condemnation", and on page 171, where "infra-State" should obviously read intra-State.

SIMEON E. BALDWIN.

*The Development of American Nationality.* By CARL RUSSELL FISH, Professor of American History, University of Wisconsin. (New York: The American Book Company. 1913. Pp. xxxix, 535.)

THIS is volume II. of *A Short History of the American People*, and covers the period from 1783 to and including the election of 1912. Volume I., *The Foundations of American Nationality*, by Professor Evarts B. Greene, is yet to appear.